

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

FRONTIER AIRLINES, INC.,

Plaintiff,

v.

AMCK AVIATION HOLDINGS IRELAND
LIMITED, ACCIPITER INVESTMENT 4
LIMITED, VERMILLION AVIATION (TWO)
LIMITED, WELLS FARGO TRUST COMPANY,
N.A., solely in its capacity as OWNER TRUSTEE,
and UMB BANK, N.A., solely in its capacity as
OWNER TRUSTEE,

Defendants.

20 Civ. 9713 (LLS)

**DEFENDANTS' SUR-REPLY IN OPPOSITION TO
FRONTIER'S MOTION FOR ATTORNEY'S FEES, COSTS, AND EXPENSES**

Pursuant to the Court's Order of July 25, 2024, Defendants submit this Sur-Reply in Opposition to Frontier's Motion for Attorney's Fees, Costs, and Expenses.

In its Reply Brief, Plaintiff Frontier Airlines, Inc. ("Frontier") makes an additional request for \$10,102.35 in fees and expenses incurred in the preparation of the Reply Brief. Frontier's request for "fees on fees" should be rejected under controlling Second Circuit precedent.

It is well-settled that, even where a contract allows for the recovery of legal fees, a party is generally not entitled to recover the fees incurred in connection with seeking such fees. An award of such fees is permitted only where expressly authorized by the contract. *See F.H. Krear & Co. v. Nineteen Named Trustees*, 810 F.2d 1250, 1266 (2d Cir. 1987) ("[A] general contract provision for the shifting of attorneys' fees does not authorize an award of fees for time spent in seeking the fees themselves."). *F.H. Krear* is still good law. *See Thor 725 8th Ave. LLC v.*

Goonetilleke, 675 F. App'x 31, 35 (2d Cir. 2017) (ruling that “there is no basis for disturbing *F.H. Krear*” and so the district court “correctly denied [plaintiff’s] request for ‘fees on fees’”). Consistent with this, courts routinely deny applications for “fees on fees” absent specific contract language allowing it. *See, e.g., Flatiron Acquisition Vehicle, LLC v. CSE Mortg. LLC*, No. 17 Civ. 8987 (GHW), 2022 WL 413229, at *11 (S.D.N.Y. Feb. 9, 2022) (rejecting application for the “cost of litigating amount of fees” absent “specific language” in the contract).¹

Here, there is no basis to depart from the general rule. The Guaranties state only that they permit recovery of “all reasonable fees and expenses, including attorney’s fees, incurred by [Frontier] in connection with the enforcement of this Guaranty.” (*See* JX 4, § 2.2.) This general language says nothing about recovering fees in connection with seeking a fee award. Therefore, Frontier’s request to recover attorneys’ fees and expenses incurred in connection with bringing this motion should be rejected.

Dated: July 26, 2024

Respectfully submitted,

s/ Jeff E. Butler

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¹ A different rule applies in the context of fee awards authorized by statute. *See, e.g., Weyant v. Okst*, 198 F.3d 311, 316 (2d Cir. 1999). Obviously, there is no statute at issue here.